

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

PATRICIA PEYTON

PLAINTIFF

VERSUS

CASE NO. 5:09cv136 DCB-JMR

CITY OF YAZOO CITY, MISSISSIPPI, ET AL.

DEFENDANTS

MOTION TO QUASH SUBPOENA

COMES NOW, the Mississippi Ethics Commission (hereafter, "Commission"), by and through its undersigned counsel, pursuant to FRCP 45(c)(3)(A)(iii), moving the court to quash the subpoena served upon it and attached hereto within Exhibit 1. The Commission shows the following facts in support thereof, to wit:

1. The Commission is an agency of the State of Mississippi established by Sections 25-4-1, et seq., Miss. Code Ann. 1972, and charged with interpreting, implementing and enforcing the Mississippi Ethics in Government Laws. The Commission's mailing address is Post Office Box 22746, Jackson, Mississippi 39225-2746, and its office is located at 146 East Amite Street in the City of Jackson, Mississippi.
2. The Commission is empowered by Sections 25-4-19 and 25-4-21, Miss. Code Ann. 1972, to investigate any violation of law by any public official or public employee of the State of Mississippi or any of its political subdivisions. Section 25-4-23, Miss. Code Ann. 1972, mandates "[a]ll commission proceedings and records relating to any investigation shall be kept confidential...." Furthermore, it is a crime to violate this confidentiality provision. § 25-4-31(1).
3. The attached subpoena served by the plaintiff herein commands the Commission to designate an officer to testify on its behalf at a deposition scheduled for March 1, 2010 at 1:00 p.m. at the Commission's offices at the address listed above. That request has been withdrawn by the letter included in Exhibit 1.

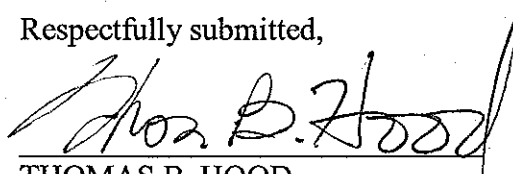
4. The plaintiff also demands the Commission produce "a copy of any ethics complaints received against the following City of Yazoo City, present or former, employees: ... including the investigative report relating to the complaints, and documents disclosing the actions taken in response to each complaint and final disposition."

5. Such documents would also contain attorney work product and confidential communications between attorney and client. The Commission hereby asserts the attorney work product and attorney-client privileges and moves to quash the subpoena on those grounds as well.

6. The only reported case known to the movant regarding a subpoena served upon the Commission is Miss. Ethics Comm'n v. Cmte. on Professional Responsibility of the Miss. Bar, 672 So.2d 1222 (Miss. 1996). That case holds the Commission must produce confidential records only in response to a subpoena issued by the Mississippi Supreme Court. Id. at 1225. The Court also held, in conformity with a line of federal cases, that confidentiality is not waived when the confidential information is disclosed in the course of litigation. Id.

WHEREFORE, PREMISES CONSIDERED, the Mississippi Ethics Commission respectfully moves the court to quash the subpoena.

Respectfully submitted,



THOMAS B. HOOD

Executive Director and Chief Counsel
Mississippi Ethics Commission
Post Office Box 22746
Jackson, Mississippi 39225-2746
Telephone: 601-359-1285
Telecopier: 601-354-6253
Miss. Bar No.: 100086

CERTIFICATE OF SERVICE

I, Thomas B. Hood, attorney for the movant herein, Mississippi Ethics Commission, do hereby certify that on March 3, 2010, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Edd L. Peyton
Attorney for Plaintiff
40 South Main St., No. 2900
Memphis, TN 38103
Email: peytone@thomasonlaw.com

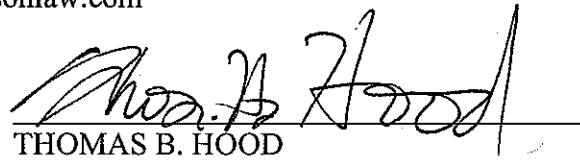

THOMAS B. HOOD

Exhibit 1

**THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL**

LAWYERS
2900 One Commerce Square
Memphis, Tennessee 38103

TELEPHONE 901/525-8721

FAX 901/525-6722

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named below. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this telecopy is prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the address above via the United States Postal Service. Thank you.

FAX TRANSMITTAL SHEET

TO: Mississippi State Government
Ethics Commission
146 East Amite Street
Jackson, MS 39201-2101

FACSIMILE 1-601-354-6253

FROM: Edd L. Peyton
Telecopier # 901/525-6722

***RE: Peyton v. Yazoo City, et al.
Our file 51832***

Date:

2-26-10

Pages Sent (Including Cover Sheet):

4

Telecopier Operator: Debbie P. Morris

Comments:

Thomason, Hendrix, Harvey, Johnson & Mitchell, PLLC

Edd Peyton
901-577-6158 (direct)
PeytonE@thomasonlaw.com

40 South Main St., 29th Floor
Memphis, Tennessee 38103
901-525-8721 (main)
901-525-6722 (fax)
www.thomasonhendrix.com

February 26, 2010

VIA FACSIMILE 1-601-354-6253

Mississippi State Government
Ethics Commission
146 East Amite Street
Jackson, MS 39201-2101

RE: Patricia Peyton v. City of Yazoo City, MS, et al.
USDC NDMS 5:09:cv136 DCB-jmr
Our file 51832

Dear Sir or Madam:

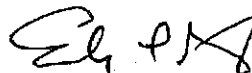
Enclosed is a copy of a subpoena duces tecum we filed to obtain the records requested thereon. You were served with the actual subpoena on February 24, 2010.

As you will notice, the enclosed copy directs you to appear on March 1, 2010. We would prefer not to appear your office for deposition to comply with this subpoena, and ask that you merely mail readable copies of the requested records to me within the next two weeks.

Thank you for your assistance.

Sincerely,

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL, PLLC



Edd L. Peyton

ELP/dpm

Enclosure

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Mississippi

PATRICIA PEYTON

Plaintiff

v.

CITY OF YAZOO CITY, MISSISSIPPI, et al.

Defendant

Civil Action No. 5:09cv136 DCB-JMR

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: CUSTODIAN OF RECORDS, MISSISSIPPI ETHICS COMMISSION, ROOM 103, BURROUGHS BUILDING,
146 EAST AMITE STREET, JACKSON, MS 39201

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: MISSISSIPPI ETHICS COMMISSION, ROOM 103,
BURROUGHS BLDG., 146 EAST AMITE ST.,
JACKSON, MS 39201-1005

Date and Time:

03/01/2010 1:00 pm

The deposition will be recorded by this method: Stenographically and videotaped, pursuant to F.R.C.P. 45

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

A copy of any ethics complaints received against the following City of Yazoo City, present or former, employees: Harrell Granberry, Jack Varner, Frances Pearce, Hattie Williams, Linda Caston, McArthur Straughter, James Magee, Mickey O'Reilly, and Shirley Knight, including the investigative report relating to the complaints, and documents disclosing the actions taken in response to each complaint and final disposition.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/15/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Signature
EDD L. PEYTON Attorney Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) PATRICIA PEYTON, who issues or requests this subpoena, are:

EDD L. PEYTON #102103
40 SOUTH MAIN ST., #2900
MEMPHIS, TN 38103; peytone@thomasonlaw.com; 901-525-8721

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 5:09cv136 DCB-JMR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: